IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.887 of 2000

Judgement reserved on: 27.2.2007

Date of decision: 5.03.2007

Gulab Singh **Petitioner**

Versus

State of H.P. and others. **Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1] *no*

For the Petitioner: **Mr. A.K. Gupta and Mr. R.D. Kaundal, Advocates.**

For the Respondents : **Mr. Rajan Dewan, Addl. A.G.**

Dev Darshan Sud,J.

The petitioner has approached this court under Article 226 of the Constitution of India challenging the orders passed by the Sub Divisional Magistrate, Paonta Sahib, dated 28.2.1994, (Annexure P-2), whereby the scheduled tribe certificate issued to the petitioner has been cancelled and order dated 31.3.1998, Annexure P-3, rejecting the application moved by the petitioner for setting aside the ex parte order cancelling the scheduled tribe certificate, has been passed.

According to petitioner, he was never afforded a reasonable opportunity of being heard in the matter and

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***? yes

is not aware about the inquiry which was conducted by respondent No.3 before passing the impugned order Annexure P-2. He submits that cancellation was made on the purported complaint of one Hans Raj son of Jeet Ram, Ex-Pardhan of village Jodhri. He has placed on record an affidavit of complainant Jeet Ram, Annexure P-4 stating that no such complaint was filed by him. After the order of cancellation was passed, petitioner moved an application under Order 9 Rule 7 of the Code of Civil Procedure for setting aside the order dated 28.2.1994. A number of grounds were taken in the application.

Respondent-State has filed its reply and stated that ample opportunity was given to the petitioner to participate in the inquiry proceedings, but he deliberately refused to receive the summons. The order passed is legal and does not call for any interference.

I have heard learned counsel for the parties and have gone through the record. I do not intend to decide upon the legality or illegality of the action which has been taken by the respondents, as any observation made by me may affect the interest of the parties to this petition. After going through the record, I am of the opinion that respondent No.3 was in error in passing the impugned order, Annexure P-3, rejecting the application requesting recalling of the *ex parte* order cancelling the scheduled tribe certificate. The record shows that an application under Order 9 Rule 7 of the Code of Civil Procedure, was filed by the petitioner before Sub Divisional Magistrate,

Paonta Sahib, respondent No.3 praying for setting aside the ex parte order dated 28.2.1994 by which the scheduled tribe certificate issued to him, has been cancelled. According to the petitioner, he was not served with any show cause notice nor was any opportunity given to him to meet the allegations which have been made against him. He is not aware of any inquiry which may have been conducted by respondent No.3. While deciding the application, respondent No.3 by his order dated 31.3.1998, has only reiterated the conclusions of the earlier order and has not decided the allegation of the petitioner that he was not properly served or that he did not have any adequate opportunity to defend himself. Rather, respondent No.3 has reiterated the facts that cancellation has been made on proper grounds. In the concluding paragraph of the order, respondent No.3 has observed that from all the evidence available on record, it is evident that the petitioner is not resident of the village Badripur and that the certificate was cancelled after holding proper inquiry and the applicant had deliberately refused to receive the summons which resulted in passing of the *exparte* order.

The application, filed by the petitioner, was required to be disposed of on the allegations made therein, namely, whether there was proper service on the petitioner or whether proper opportunity has been granted to him to defend himself. In paragraph 4 of the application filed by the applicant, he states that he is serving in the Life Insurance Company as Development

Officer and had received one letter through his higher authority stating that scheduled tribe certificate issued to him, has been cancelled. He states that he came to know about this fact only on 25.10.1997. He made a prayer for being allowed to present his case.

The order sheets show that the matter remained pending from 24.11.1997 to 31.3.1998 only for the purposes of filing reply and rejoinder regarding the recalling of the order. No documents or other evidence has been produced on the record to show that the petitioner was ever given an opportunity to defend himself. I also find from the perusal of the record that two notarized affidavits of Shri Tungal Singh son of Nihal Singh and Surjan Singh son of Dila Ram, were filed. Both these persons state that no summonses were served or attempted to be served on the petitioner in their presence. Respondent No.3 has not at all considered these two affidavits, leave alone granting an opportunity to the petitioner to show cause as to why *ex parte* proceedings be not initiated against him. Respondent No.3 relied upon the report of the process server, which shows that Shri Tungal Singh and Surjan Singh were the witnesses, who testified to the fact that the petitioner had refused to receive the summons. Why and under what circumstances these affidavits have not been considered, remains a matter to be decided. Respondent No.3 was in error in dismissing the application for setting aside the proceedings which were conducted ex parte against the petitioner without affording him ample opportunity to

meet the case against him. The decision on the application only reiterates that the petitioner is guilty of suppressing material facts for obtaining scheduled tribe certificate. Respondent No.3 was required to decide the application by considering at least the material on record. This exercise having not been undertaken, order dated 31.3.1998 (Annexure P-3), passed by respondent No.3, cannot be sustained. It is accordingly quashed and set aside. Respondent No.3 is directed to rehear the matter and to decide afresh as to whether there were sufficient grounds for proceeding ex parte against the petitioner, more so, in view of the affidavits which have been placed on record of the inquiry file itself. Needless to say that respondent No.3 will give adequate opportunity to the petitioner in accordance with law to establish his case. The matter has been pending since 1997. It is, therefore, directed that respondent No.3 will decide and dispose of the matter within a period of four months from the date when notice of the proceedings is given to respondent No.3. The writ petition is disposed of with these directions. There shall be no order as to costs.

March 5, 2007 **(Dev Darshan Sud)**
(ss) **Judge**